

FOREST SERVICE PARTNERSHIP ENHANCEMENT ACT OF
2005

DECEMBER 6, 2005.—Ordered to be printed

Mr. POMBO, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany H.R. 3818]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 3818) to authorize the Secretary of Agriculture to enter into partnership agreements with entities and local communities to encourage greater cooperation in the administration of Forest Service activities on and near National Forest System lands, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Forest Service Partnership Enhancement Act of 2005”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.
- Sec. 4. Authority for Forest Service agreements with cooperators.
- Sec. 5. Cost sharing under agreements.
- Sec. 6. Treatment of funds received under agreements.
- Sec. 7. Repeal of superseded authorities.
- Sec. 8. Regulations.
- Sec. 9. Relation to agreements otherwise authorized by law.

SEC. 2. FINDINGS AND PURPOSES.

(a) **FINDINGS.**—Congress finds the following:

(1) The Forest Service, managing national forests and grasslands covering 192,000,000 acres, plays an integral role in the protection, enhancement, and conservation of the natural resources of the United States.

(2) The Forest Service has a long history of successful cooperation with non-Federal entities in fulfilling all mission areas and responsibilities of the Forest Service.

(3) Such cooperation is becoming increasingly more important in the research and development mission area of the Forest Service as the number of staff research scientists has declined from 985 scientists in 1985 to only 486 scientists in 2005. To accomplish its research mission to meet current forestry challenges and ensure that forest managers have the latest science and technology to manage the National Forest System sustainably over the long-term, it is critical that the Forest Service cooperate with other research organizations, including forestry schools, land-grant colleges and universities, and 1890 institutions.

(4) By expanding and clarifying Forest Service authorities to work with cooperators, the Forest Service can improve the ability of the Forest Service to administer National Forest System lands by increasing local community involvement in collaborative restoration and building the capacity of rural public land communities in fulfilling the Forest Service's mission.

(5) The Forest Service can benefit from maximizing use of existing authorities and establishing new authority to improve local community involvement in, and support of, fulfilling the Forest Service's mission.

(6) Encouraging conservation education will increase public awareness of Forest Service programs and activities, will heighten public understanding of the need to sustain natural and cultural resources, and will promote public participation in the conservation of these resources.

(7) Encouraging partnerships with public land communities will expedite the implementation of priority restoration projects on National Forest System lands.

(b) PURPOSES.—The purposes of this Act are—

(1) to encourage agreements between the Forest Service and cooperators to promote public awareness and participation in the restoration and management of the resources and programs of the Forest Service;

(2) to affirm Congress' support for agreements between the Forest Service and cooperators that further the Forest Service's mission by assisting the Forest Service in the administration of all Forest Service programs;

(3) to clarify and create additional authority for the Forest Service to work with cooperators; and

(4) to leverage Forest Service resources with the resources of cooperators.

SEC. 3. DEFINITIONS.

In this Act:

(1) COOPERATOR.—The term “cooperator” means any Federal agency, State or local government, tribal government, public or private agency, nonprofit organization, institution (including educational institution), small and local business, corporation, or other legal entity within the United States, or individual.

(2) NATIONAL FOREST SYSTEM LANDS.—The term “National Forest System lands” means lands included in the National Forest System (as defined in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a))).

(3) SECRETARY.—The term “Secretary” means the Secretary of Agriculture, acting through the Chief of the Forest Service.

(4) NONPROFIT ORGANIZATION.—The term “nonprofit organization” means any organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code.

SEC. 4. AUTHORITY FOR FOREST SERVICE AGREEMENTS WITH COOPERATORS.

(a) AGREEMENT AUTHORITY.—Using amounts appropriated or otherwise made available for the Forest Service, the Secretary of Agriculture, acting through the Chief of the Forest Service, may enter into agreements, including cost-share agreements, with cooperators for the mutual benefit of the parties to the agreement for the following types of activities:

(1) Developing, producing, publishing, distributing, or selling education and interpretive materials and products.

(2) Developing, conducting, or selling educational and interpretive programs and services.

(3) Constructing, maintaining, or improving facilities (not under the jurisdiction, custody, or control of the Administrator of General Services) on or in the vicinity of National Forest System lands for the sale or distribution of educational and interpretive materials, products, programs, and services.

(4) Operating facilities, including providing the services of Forest Service employees to staff facilities, in or on any public or private building, facility, or land (not under the jurisdiction, custody, or control of the Administrator of General Services) for the sale or distribution of educational materials, products, programs, and services pertaining to National Forest System lands, private lands, and lands administered by other public entities.

(5) Selling health and safety convenience products, photography supplies, or other similar items, as determined by the Secretary, on or in the vicinity of National Forest System lands.

(6) Collecting funds from the sale of materials, products, programs, and services on behalf of cooperators.

(7) Activities to restore and maintain the ecological integrity and biodiversity of National Forest System lands.

(8) Watershed restoration and enhancement activities on National Forest System lands, or on other lands that benefit resources on National Forest System land within the same watershed, for—

(A) protecting, restoring, and enhancing resources, including fish and wildlife habitat; or

(B) reducing risk from natural disaster where public safety is threatened.

(9) Such other cooperative activities as the Secretary considers to be appropriate.

(b) **TERMS AND CONDITIONS.**—The Secretary shall require such terms and conditions in an agreement entered into under this section as the Secretary considers to be necessary to protect the investments to be made by the United States under the agreement, including terms related to the ownership of any facilities or improvements constructed or improved under such an agreement, and such additional terms and conditions as are mutually agreed to by the Secretary and the cooperator.

(c) **RELATION TO OTHER CONTRACT, GRANT, AND AGREEMENT REQUIREMENTS.**—The Secretary may enter into an agreement under this section notwithstanding chapter 63 of title 31, United States Code.

SEC. 5. COST SHARING UNDER AGREEMENTS.

(a) **SHARING OF COSTS.**—The manner in which costs shall be shared between the Secretary and a cooperator under an agreement entered into under section 4, including the acceptance of in-kind contributions, shall be provided for in terms and conditions imposed under subsection (b) of such section in connection with the agreement. The Secretary shall issue guidance for cost sharing with cooperators.

(b) **TREATMENT OF CONTRIBUTIONS OF VOLUNTEERS.**—The value of services performed by persons who volunteer their services to the Forest Service and who are recruited, trained, and supported by a cooperator under an agreement under section 4 may be considered an in-kind contribution of the cooperator for purposes of cost sharing under subsection (a).

SEC. 6. TREATMENT OF FUNDS RECEIVED UNDER AGREEMENTS.

(a) **DEPOSIT OF FUNDS.**—Except as provided in subsection (b), all monies received from a cooperator as contributions toward cooperative activities under an agreement entered into under section 4 shall be—

(1) deposited in the Forest Service Cooperative Work Trust Fund established pursuant to the penultimate paragraph under the heading “FOREST SERVICE” in the Act of June 30, 1914 (16 U.S.C. 498), or the successor of that fund; and

(2) available to the Secretary, without further appropriation and until expended, to carry out the agreement.

(b) **FUNDS COLLECTED ON BEHALF OF COOPERATOR.**—Funds collected under an agreement entered into under section 4 from the sale of materials, products, programs, and services on behalf of a cooperator, as authorized by subsection (a)(6) of such section, are not the property of the United States, and the Secretary shall forward such funds to the cooperator.

(c) **ADVANCEMENT OR REIMBURSEMENT OF FUNDS.**—In an agreement entered into under section 4, the Secretary may advance or reimburse funds to a cooperator from any Forest Service appropriation available for similar work without regard to subsections (a) and (b) of section 3324 of title 31, United States Code, and may furnish or share supplies, facilities, or equipment. The Secretary may advance funds under this subsection only when the advancement represents the Secretary’s share of costs of activities or services under the agreement and the cooperator is not obligated to reimburse the Secretary.

SEC. 7. REPEAL OF SUPERSEDED AUTHORITIES.

(a) **EDUCATIONAL MATERIALS AND CHALLENGE COST-SHARE PROGRAM.**—The thirteenth paragraph under the heading “ADMINISTRATIVE PROVISIONS, FOREST SERVICE” in title II of the Department of the Interior and Related Agencies Appropriations Act, 1992 (Public Law 102–154; 105 Stat. 1018; 31 U.S.C. 6305 note), is repealed.

(b) **WATERSHED RESTORATION AND ENHANCEMENT AGREEMENTS.**—Section 323 of the Department of the Interior and Related Agencies Appropriations Act, 1999 (as contained in section 101(e) of division A of Public Law 105–277; 112 Stat. 2681–290; 16 U.S.C. 1011 note), is repealed.

SEC. 8. REGULATIONS.

The Secretary shall issue such regulations as may be necessary to accomplish the purposes of this Act.

SEC. 9. RELATION TO AGREEMENTS OTHERWISE AUTHORIZED BY LAW.

Except in the case of the provisions of law repealed by section 7, the authority of the Secretary to enter into agreements with cooperators under section 4 is in addition to the authorities provided the Secretary in any other provision of law, and nothing in this Act shall be construed as limiting or modifying the authority of the Secretary to enter into agreements otherwise authorized by law.

PURPOSE OF THE BILL

The purpose of H.R. 3818 is to authorize the Secretary of Agriculture to enter into partnership agreements with entities and local communities to encourage greater cooperation in the administration of Forest Service activities on and near National Forest System lands.

BACKGROUND AND NEED FOR LEGISLATION

The Forest Service has accumulated authorities for working cooperatively, and at times the complex patchwork of existing authorities has resulted in inconsistent interpretation and time-consuming processes. In 2002, a Forest Service task force determined that additional authorities were needed to clarify and enhance the agency's ability to work with others to leverage federal funds more efficiently. The task force analysis resulted in development of H.R. 3818. The Administration sent a similar bill to Congress in September 2004, but it was not introduced before the end of the 108th Congress. H.R. 3818 provides clarification and updates authorities to reflect new kinds of cooperative work relationships.

H.R. 3818 would authorize the Secretary of Agriculture to enter into mutual benefit agreements so that resources can be more easily shared and costs leveraged. The Secretary could enter into agreements with cooperators in which the parties would share costs of activities or services otherwise authorized by law. The Secretary may enter into agreements with cooperators to enhance visitor awareness and knowledge, and for various other purposes such as:

- Developing, producing, publishing, distributing, or selling education and interpretive materials and products;
- Developing, conducting, or selling educational and interpretive programs and services;
- Constructing, maintaining, or improving facilities on or in the vicinity of National Forest System lands for the sale or distribution of educational and interpretive materials, products, programs, and services;
- Operating (and staffing) facilities in any public or private building for the sale or distribution of educational materials, products, programs, and services;
- Selling health and safety convenience products, photography supplies, or other similar items (as determined by the Secretary) on or in the vicinity of National Forest System lands;
- Collecting funds from the sale of materials, products, programs, and services on behalf of cooperators;
- Restoring and maintaining ecological integrity and biodiversity of National Forest System lands;

- Carrying out activities on National Forest System lands or non-federal lands within a watershed, for the protection, restoration, and enhancement of resources, including fish and wildlife habitat.

The value of services performed by volunteers may be considered an in-kind contribution. Cooperators would not be required to provide matching contributions on a one-to-one basis, or other preset formula. The intent is for cooperator's contributions to be commensurate with the benefits gained. Additionally, under the current challenge cost-share program, requirements for advance payments limit participation by cash-poor cooperators and those who otherwise cannot participate on a reimbursable basis. Section 6(c) of the bill, relating to the advancement or reimbursement of funds to a cooperator, would address this practical concern.

The Forest Service has permanent authority to enter into challenge cost-share agreements under a provision in the Department of the Interior and Related Agencies Appropriations Act, 1992. This provision would be repealed in section 8 of the bill and replaced with the authority provided in section 4, which would clarify the Forest Service's authority to enter into cost-share agreements (formerly known as challenge-cost share agreements).

The bill requires that the Secretary shall issue regulations for implementation of the bill.

COMMITTEE ACTION

H.R. 3818 was introduced on September 15, 2005, by Congressman Greg Walden (R-OR). The bill was primarily referred to the Committee on Agriculture. The bill was additionally referred to the Committee on Resources, and within the Committee to the Subcommittee on Forests and Forest Health. On September 27, 2005, the Subcommittee held a hearing on the bill. On October 19, 2005, the Full Resources Committee met to consider the bill. The Subcommittee was discharged from further consideration of the bill by unanimous consent. Congressman Walden offered an amendment in the nature of a substitute to combine the watershed and enhancement agreements from section 7 into section 4. The amendment also contained technical corrections requested by the Forest Service and a new finding. It was adopted by unanimous consent, and the bill as amended was then ordered favorably reported to the House of Representatives by unanimous consent.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures. According to the Congressional Budget Office, enactment of this bill could change the timing of outlays and thus would affect direct spending, but any change in the timing of outlays would be “negligible.”

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

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H.R. 3818 would expand the Forest Service’s authority to enter into agreements with nonfederal entities (state and local governments, Indian tribes, or nonprofit organizations) to perform certain activities on federal land administered by that agency. (Funding for such agreements comes from annual appropriations and, in some cases, from receipts from the sale of timber on federal land.) H.R. 3818 would not change the amount of funding that would be available to the Forest Service to implement such agreements; however, it would allow the agency to provide to such entities, in advance, its share of costs. Relative to current law, which generally prohibits such advance payments, that authority could accelerate spending of funds that are currently available for cooperative projects on land administered by the Forest Service. Any resulting change in the timing of outlays would affect direct spending.

Based on information from the Forest Service, CBO expects that the agency would provide advance payments only for projects estimated to cost less than a few thousand dollars. CBO estimates that the agency currently spends less than \$500,000 annually for such projects and that any resulting changes in the timing of federal spending under the bill would be negligible. Enacting H.R. 3818 would not affect revenues.

H.R. 3818 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. Any costs incurred by state, local, or tribal governments to participate in the partnership agreements authorized by this bill would be incurred voluntarily.

The CBO staff contact for this estimate is Megan Carroll. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, and existing law in which no change is proposed is shown in roman):

TITLE II OF THE DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 1992

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DEPARTMENT OF AGRICULTURE

FOREST SERVICE

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ADMINISTRATIVE PROVISIONS, FOREST SERVICE

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【Notwithstanding the provisions of the Federal Grant and Cooperative Agreements Act of 1977 (31 U.S.C. 6301–6308), the Forest Service is authorized hereafter to negotiate and enter into cooperative arrangements with public and private agencies, organizations, institutions, and individuals to print educational materials and to continue the Challenge Cost-Share Program.】

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SECTION 323 OF THE DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 1999

(Division A of Public Law 105–277)

【SEC. 323. (a) WATERSHED RESTORATION AND ENHANCEMENT AGREEMENTS.—For each of fiscal years 2006 through 2011, to the extent funds are otherwise available, appropriations for the Forest Service may be used by the Secretary of Agriculture for the purpose of entering into cooperative agreements with willing Federal, tribal, State and local governments, private and nonprofit entities and landowners for the protection, restoration and enhancement of fish and wildlife habitat, and other resources on public or private land, the reduction of risk from natural disaster where public safety is threatened, or a combination thereof or both that benefit these resources within the watershed.

[(b) DIRECT AND INDIRECT WATERSHED AGREEMENTS.—The Secretary of Agriculture may enter into a watershed restoration and enhancement agreement—

[(1) directly with a willing private landowner; or

[(2) indirectly through an agreement with a State, local or tribal government or other public entity, educational institution, or private nonprofit organization.

[(c) TERMS AND CONDITIONS.—In order for the Secretary to enter into a watershed restoration and enhancement agreement—

[(1) the agreement shall—

[(A) include such terms and conditions mutually agreed to by the Secretary and the landowner, state or local government, or private or nonprofit entity;

[(B) improve the viability of and otherwise benefit the fish, wildlife, and other resources on national forests lands within the watershed;

[(C) authorize the provision of technical assistance by the Secretary in the planning of management activities that will further the purposes of the agreement;

[(D) provide for the sharing of costs of implementing the agreement among the Federal Government, the landowner(s), and other entities, as mutually agreed on by the affected interests; and

[(E) ensure that any expenditure by the Secretary pursuant to the agreement is determined by the Secretary to be in the public interest; and

[(2) the Secretary may require such other terms and conditions as are necessary to protect the public investment on non-Federal lands, provided such terms and conditions are mutually agreed to by the Secretary and other landowners, State and local governments or both.

[(d) REPORTING REQUIREMENTS.—Not later than December 31, 1999, the Secretary shall submit a report to the Committees on Appropriations of the House and Senate, which contains—

[(1) A concise description of each project, including the project purpose, location on federal and non-federal land, key activities, and all parties to the agreement.

[(2) the funding and/or other contributions provided by each party for each project agreement.]